

REMARKS

Applicant appreciates the cooperation of Examiner Hoffman during the personal interview of July 12, 2006. Although no formal agreement was reached at the interview, the Examiner did indicate that arguments presented at that time and reproduced below “appear to be persuasive,” as memorialized in the Interview Summary.

Claims 13-41 are pending in this application.

Applicant has amended dependent claims 17 and 27 above to change “obtuse” to “blunt and unpointed”. Claim 35, which depends from claim 31 but otherwise is identical in its recitation to claims 17 and 27, has been added. This amendment and the subject matter of new claim 35 are supported by the definition set forth in the specification at page 9, line 5. Applicant has presented the amendments in response to the Examiner’s inquiries over the term “obtuse” as expressed during the interview. It is respectfully submitted that the amendments to claims 17 and 27 and the introduction of new claim 35 do not present issues that would “require further search and/or consideration” (see Interview Summary). The amendments serve only to explicitly recite in the claims the definition of “obtuse” expressly found in the specification. Thus, the meaning of these claims has not been altered.

The amendment to claim 20 has been presented to correct antecedent basis.

The subject matter of new claims 36-41 is supported in the original disclosure at, for example, page 14, lines 7-13 and page 20, lines 8-13. The new claims are all in dependent format, and should not introduce any new issues that would “require further search and/or consideration.”

Accordingly, Applicant respectfully requests approval and entry of the claim amendments and new claims.

Drawings

Replacement drawings have been filed herewith to address the objection. In particular, the numbers and reference characters have been objected to as not plain and legible in Figs. 1-10.

Applicant has filed herewith replacement drawings to correct the alleged defect. Applicant respectfully requests approval and entry of the replacement drawings and withdraw of the objection.

Claim Rejections – 35 U.S.C. § 102

Claims 13-18, 21-23, and 25-31 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,146,022 to Johnson et al.

Applicant respectfully traverses this rejection.

As a preliminary matter, Applicant is unclear as to the reason claims 25-30 have been included in this rejection, given that claim 24 from which they depend was not subject to the rejection. This anomaly was not discovered by Applicant until after the interview, and hence was not raised at that time. Applicant respectfully submits that claims 25-30, which depend from claim 24 and incorporate all of the distinguishing features thereof, should not be subject to this rejection.

As explained during the interview, independent claims 13, 24, and 31 each define the surgical instrument as including a flexible cable and a plurality of permanent bone-

contacting enlargements fixedly attached to the flexible cable. Thus, when the claims recite that the surgical instrument is passed about the bone, implicitly the claims state that the cable and the bone-contacting enlargements fixedly attached to the cable are passed together about the bone.

In contrast, Johnson discloses bone tacks 30 having pointed pins 32 that are “staked” into the bone. After the bone tacks 30 are embedded in place, wire 55 is brought about the outside of the bone and allowed to engage grooves 33 of bone tacks 30. (Column 4, lines 53-63) Unlike the claimed invention, bone tacks 30 are neither fixedly attached to wire 55 nor passed together with wire 55 about the bone.

For these reasons, Applicant respectfully submits that the Section 102 rejection of independent claims 13 and 31 is misplaced and should be withdrawn. Applicant further respectfully submits that the remaining rejected claims, which are in dependent format and incorporate the distinguishing features of the independent claims from which they depend, are patentable for the same reasons and for the additional reason that the added subject matter thereof is neither disclosed in nor reasonably suggested by the art.

For example, claims 17 and 27 recite that the bone-contacting enlargements are obtuse, that is, blunt and unpointed. These characteristics permit the bone-contacting enlargements to be freely passed about the bone together with the cable. Johnson, on the other hand, discloses the use of tacks 30 having pointed pins 32. Tacks 30 are designed to be embedded within the bone using a staking operation. Clearly, tacks 30 are neither blunt nor unpointed. With regard to dependent claims 18 and 28, the tacks 30 do not constitute “beads.”

Accordingly, withdrawal of the Section 102 rejection of claims 13-18, 21-23, and 25-31 is respectfully requested.

Claim Rejections -- 35 U.S.C. § 103

Claims 19, 20, 24, and 32-34 have been rejected as being unpatentable over Johnson in view of U.S. Patent Nos. 6,595,994 and 5,414,658, both to Kipela et al.

Applicant respectfully traverses this rejection.

Applicant has specified above the various deficiencies of Johnson vis-à-vis the independent claims. The Kipela patents do not overcome these deficiencies. Rather, the Kipela patents have been cited by the Examiner for their disclosures of tensioning devices.

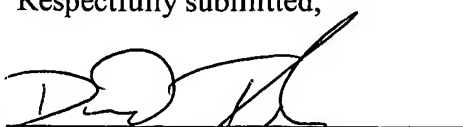
For these reasons, Applicant respectfully requests reconsideration and withdrawal of the Section 103 rejection.

Finally, new claims 35-41 are respectfully submitted to be patentable over the art in view of their dependencies from the independent claims, and further because the added subject matter of these claims is neither disclosed in nor reasonably suggested by the applied art.

If any fees are due in connection with the filing of this response, including any extension fee or extra claim fees, please charge Deposit Account No. 50-0548 and accept this paper as a petition for extension, if necessary.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "David S. Taylor", is written over a horizontal line.

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